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GOVERNMENT OF KERALA

Law Department

NOTIFICATION

No. 7811-K1/74/Law.

Dated, Trivandrum, 28th June 1974/
7th Ashadha, 1896 S. E.

The following Ordinance promulgated by the Governor on the 28th June, 1974, is hereby published for general information.

By order of the Governor,

M. SEKHARAN,
Law Secretary.

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33/2157/MC.

ORDINANCE No. 8 OF 1974

THE KERALA CASHEW FACTORIES (ACQUISITION) ORDINANCE, 1974

Promulgated by the Governor of Kerala in the Twenty-fifth Year of the Republic of India.

AN

ORDINANCE

to provide for the acquisition, in the public interest, of certain cashew factories.

Preamble.—WHEREAS it has been brought to the notice of the Government that of late a large number of workers employed in cashew factories are rendered unemployed and their conditions of service varied to their detriment by the action of the employers;

AND WHEREAS it is necessary in the public interest to prevent large scale unemployment among the workers in the cashew industry and also to provide employment to the workers who have been rendered unemployed and to secure to them just conditions of service;

AND WHEREAS the above objectives can be achieved only by acquiring certain factories;

AND WHEREAS such acquisition is also considered necessary to give effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of article 39 of the Constitution of India;

AND WHEREAS the Legislative Assembly of the State of Kerala is not in session and the Governor of Kerala is satisfied that circumstances exist which render it necessary for him to take immediate action;

AND WHEREAS instructions from the President have been obtained in pursuance of the proviso to clause (1) of article 213 of the Constitution of India;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Kerala is pleased to promulgate the following Ordinance:—

1. *Short title, extent and commencement.*—(1) This Ordinance may be called the Kerala Cashew Factories (Acquisition) Ordinance, 1974.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once.

2. *Definitions.*—In this Ordinance, unless the context otherwise requires,—

(a) "appointed day" means the date of publication of the declaration under sub-section (1) of section 3;

(b) "cashew factory" means a factory as defined in the Factories Act, wherein processing of cashewnuts is being carried on and includes the factory building, the site thereof, and the buildings and lands appurtenant thereto used or necessary for, or in connection with, the working of the factory;

(c) "Corporation" means the Kerala State Cashew Development Corporation Limited, incorporated under the Companies Act, 1956 (Central Act 1 of 1956);

(d) "Factories Act" means the Factories Act, 1948 (Central Act 63 of 1948);

(e) "occupier" means an occupier as defined in the Factories Act;

(f) "prescribed" means prescribed by rules made under this Ordinance;

(g) "processing", with reference to cashewnuts, includes extraction of cashewnut oil and roasting, shelling, peeling, grading and treating of cashewnuts.

3. *Order of acquisition.*—(1) The Government may, if they are satisfied—

(a) that the occupier of a cashew factory does not conform to the provisions of law relating to safety, conditions of service or fixation and payment of wages to the workers of the factory; or

(b) that raw cashewnuts allotted to a cashew factory by the Cashew Corporation of India are not being processed in the factory to which allotment has been made or that such nuts are being transferred to any other cashew factory; or

(c) that there has been large scale unemployment, other than by way of lay off or retrenchment, of the workers of a cashew factory,

by order published in the Gazette, declare that that cashew factory shall stand transferred to, and vest in, the Government:

Provided that before making a declaration under this sub-section in respect of a cashew factory, the Government shall give the occupier of the factory and the owner of the factory where he is not the occupier a notice of their intention to take action under this sub-section and the grounds therefor and consider the objections that may be preferred in pursuance of such notice.

Explanation.—For the purposes of this sub-section, the expressions "lay off" and "retrenchment" shall have the meanings respectively assigned to them in the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

(2) The notice referred to in the proviso to sub-section (1) shall also be published in two newspapers published in the State of Kerala, and

such publication shall be deemed to be sufficient notice to the occupier, to the owner where he is not the occupier and to all other persons interested in the cashew factory.

(3) On the making of a declaration under sub-section (1), the cashew factory to which the declaration relates, together with all machinery, other accessories and other movable properties as were immediately before the appointed day in the ownership, possession, power or control of the occupier in relation to the factory and all books of account, registers and other documents relating thereto shall stand transferred to, and vest in, the Government.

4. *General effect of vesting under section* 3.—All property vesting in the Government under section 3 shall, by force of such vesting, be freed and discharged from any trusts, obligations, mortgages, charges, lien and other encumbrances affecting it, and any attachment, injunction or any decree or order of court restricting the use of such property in any manner shall be deemed to have been withdrawn.

5. *Inventory of properties.*—(1) An Officer authorised by the Government in this behalf shall, after the service of the notice under the proviso to sub-section (1) of section 3 or the publication of that notice under sub-section (2) of that section and before the publication of the declaration under the said sub-section (1), prepare a complete inventory of all the properties of the cashew factory to which the notice relates, as on the date of service of the said notice or the date of publication of that notice, as the case may be.

(2) The officer referred to in sub-section (1) shall, for the purpose of preparing the inventory, have the power to enter the premises of the cashew factory and to require the occupier or any person employed therein to furnish such information as he deems necessary.

(3) Any person who is required to furnish any information under sub-section (2) shall be bound to furnish such information as is within his knowledge.

6. *Property and assets not to be damaged or removed after service of notice.*—After the service of the notice under the proviso to sub-section (1) of section 3 or the publication of that notice under sub-section (2) of that section, the occupier or any other person shall not commit any act which will diminish the value of the properties and assets of the cashew factory to which the notice relates or remove any such property or asset from the premises of the factory.

7. *Duty to deliver possession of property acquired and documents relating thereto.*—(1) Where any property has vested in the Government under this Ordinance, every person in whose possession or custody or under whose control the property may be, shall deliver the property to the Government forthwith.

(2) The Government may take or cause to be taken all necessary steps for securing possession of the properties which have vested in the Government under this Ordinance and, for this purpose, the Government may use such force as they deem necessary.

8. *Power of Government to direct vesting of cashew factory in the Corporation.*—(1) Notwithstanding anything contained in section 3, the Government may, by order in writing, direct that a cashew factory vested in them under this Ordinance shall, instead of continuing to vest in the Government, vest in the Corporation with effect from such date (not being a date earlier than the appointed day) as may be specified in the order.

(2) Where an order vesting a cashew factory in the Corporation is made under sub-section (1), all the rights, liabilities and obligations of the Government in relation to such factory shall, on and from the date of such vesting, be deemed to have become the rights, liabilities and obligations respectively of the Corporation.

9. *Payment of amount.*—(1) The occupier of every cashew factory which is acquired under this Ordinance shall be paid by the Government an amount which shall be determined in accordance with the principles specified in the Schedule:

Provided that where the occupier is not the owner of the cashew factory, such owner shall be entitled to such portion of the amount as may be determined by the District Court under sub-section (5).

(2) The amount payable under sub-section (1) shall be determined by the District Collector within a period of three months from the appointed day.

(3) Where there is dispute as to the amount determined by the District Collector or where there are more persons than one claiming to be entitled to the amount, the District Collector shall refer the matter for the determination of the District Court within whose jurisdiction the cashew factory is situate.

(4) A reference under sub-section (3) shall be in such form, shall contain such particulars and shall be accompanied by such documents, as may be prescribed.

(5) On receipt of a reference under sub-section (3), the District Court shall, after such inquiry as it deems necessary, pass an order determining the amount payable under sub-section (1) or apportioning the amount among the persons entitled thereto.

(6) Every secured debt due from the owner or occupier of a cashew factory vested in the Government or the Corporation under this Ordinance shall have priority over all other debts and shall be paid in accordance with the rights and interests of the secured creditors.

(7) The amount determined in accordance with the foregoing provisions shall be paid to the person or persons entitled thereto in cash within a period of six months from the date of such determination:

Provided that if the amount is not paid within the period aforesaid, the Government shall pay interest on the amount at the rate of four per cent per annum from the date of expiry of the said period.

10. *Employment of certain employees to continue.*—(1) Every person who is a workman within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), and has been, immediately before the appointed day, in the employment of a cashew factory vested under this Ordinance in the Government or the Corporation, as the case may be, shall become, on and from the appointed day, an employee of the Government, or, as the case may be, of the Corporation and shall hold office or service in the cashew factory on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to him if such cashew factory had not been transferred to, and vested in, the Government or the Corporation, as the case may be, and continue to do so unless and until his employment in such cashew factory is duly terminated or until his remuneration, terms and conditions of employment are duly altered, by the Government or the Corporation, as the case may be.

(2) The Government or the Corporation, as the case may be, in which a cashew factory has vested under this Ordinance, may employ, on mutually acceptable terms and conditions, any person who is not a workman within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) and who has been, immediately before the appointed day, in the employment of such cashew factory and on such employment the said person shall become an employee of the Government or the Corporation, as the case may be.

(3) Save as otherwise provided in sub-sections (1) and (2), the services of every person who is, on the appointed day, an employee of a cashew factory vested in the Government or the Corporation under this Ordinance shall stand terminated on and from such date as may be specified by the Government.

(4) Where, under the terms of any contract of service or otherwise, any person whose service becomes terminated, or whose service becomes transferred to the Government or the Corporation by reason of the provisions of this Ordinance, is entitled to any payment by way of gratuity or retirement benefit or for any leave not availed of, or any other benefits, such person may enforce his claim against the occupier of the cashew factory but not against the Government or the Corporation.

11. *Provident fund.*—(1) Where a cashew factory has eatablished a provident fund for the benefit of its employees, the moneys relatable to the employees, whose services have become transferred, by or under this Ordinance, to the Government or the Corporation, shall, out of the moneys standing, on the appointed day, to the credit of such provident fund, stand transferred to, and vest in, the Government or the Corporation, as the case may be.

(2) The moneys which stand transferred, under sub-section (1), to the Government or the Corporation shall be dealt with by the Government or the Corporation, as the case may be, in such manner as may be prescribed.

12. *Superannuation welfare and other funds.*—Where a superannuation, welfare or other fund has been established for the benefit of the employees whose services stand transferred to the Government or the Corporation under this Ordinance, the cashew factory, by which such employees were employed, shall distribute the amount due to each such employee as if the employee had superannuated, or his services with the cashew factory had terminated, on the day immediately preceding such date as may be specified by the Government in this behalf.

13. *Penalties.*—(1) Any person who—

(a) fails to furnish any information which he is bound to furnish under sub-section (3) of section 5 or furnishes any such information which he knows or has reason to believe to be false; or

(b) contravenes the provisions of section 6; or

(c) having in his possession, custody or control any property forming part of a cashew factory in respect of which a declaration under section 3 has been made, wrongfully withholds such property from the Government; or

(d) wrongfully obtains possession of any property forming part of a cashew factory which has vested in the Government under this Ordinance,

shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both:

Provided that the court trying any offence under clause (c) or clause (d) may, at the time of convicting the accused person, order him to deliver up within a time to be fixed by the court any property wrongfully withheld or obtained.

(2) No court shall take cognizance of an offence punishable under this section except with the previous sanction of the Government or an officer authorised by the Government in this behalf.

14. *Offences by companies.*—(1) Where an offence under this Ordinance has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Ordinance has been committed by a company and it

is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.

15. *Protection of action taken in good faith.*—(1) No suit, prosecution or other legal proceeding shall lie against the Government or the Corporation or any officer or other employee of the Government or the Corporation for anything which is in good faith done or intended to be done under this Ordinance.

(2) No suit or other legal proceeding shall lie against the Government or the Corporation or any officer or other employee of the Government or the Corporation for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Ordinance.

16. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules to carry out the provisions of this Ordinance.

(2) Every rule made under this Ordinance shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

THE SCHEDULE

[See section 9]

Principles for determining amount payable for acquisition of cashew factories.

Paragraph I

The amount to be paid by the Government for the acquisition of a cashew factory shall be the sum total of the value of the properties and assets of the factory existing on the appointed day, calculated in accordance with the provisions of paragraph II.

Paragraph II

(a) (i) In respect of any land which was part of the factory at the time of establishment of the factory, the value of such land at the time of establishment of the factory;

(ii) In respect of any land acquired by the owner or occupier for the purposes of the factory subsequent to the establishment of the factory, the value of such land at the time of such acquisition;

(b) The cost of any buildings at the time of construction *minus* depreciation at the rate of 5 per cent per annum subject to a maximum of 50 per cent depreciation;

(c) The actual cost of acquiring any plant, machinery or other equipment which has not been worked or used and the written-down value (determined in accordance with the provisions of the Income-tax Act, 1961) of any other plant, machinery or other equipment, provided that such written down value shall not be less than 25 per cent of the actual cost of acquiring such plant, machinery or other equipment.

N. N. WANCHOO,
GOVERNOR.